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MEDIA RELEASE

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INVESTIGATION LAUNCHED BY THE COMPETITION COMMISSION ON SERVICE FEES CHARGED BY TRAVEL AGENTS

The Competition Commission of Mauritius (CCM) has launched a further investigation, into potential Competition Act breaches by travel agents.

The investigation has been instigated by allegations that travel agencies, following advice by MAITA, are setting similar service fees. The guidelines were issued by Air Mauritius following the end of the system of airlines paying commission to travel agencies. If pricing guidelines are being implemented by several travel agents, that may be considered to be a collusive price-fixing agreement, which could be a breach of Section 41 of the Competition Act.

Only when an Investigation has been completed can firm conclusions be drawn. At this early stage the Executive Director of the CCM has concluded that he has reasonable grounds to believe that the practices suspected are being carried out and that these may represent breaches of the Competition Act 2007. And so the CCM is investigating.

Background for editors:

The Competition Act

The Competition Act 2007 came fully into effect on November 25th 2009, and is enforced by the Competition Commission of Mauritius, the CCM. Sub-parts II and III of Part III of the Competition Act 2007, cover restrictive practices described under 'Other restrictive agreements' and 'Monopoly situations'.

To take action, the CCM must find that the conduct of an enterprise in a monopoly situation restricts, prevents or distorts competition or otherwise exploits the monopoly situation. We refer to such conduct

as 'abuse of monopoly'. Where the Executive Director has reasonable grounds to believe that abuse is occurring, or will occur, he may launch an investigation.

Collusive Agreements

Section 41 to 43 of the Competition Act, prohibit agreements between enterprises, which are considered collusive, unless excluded under the Act. An "agreement" may be in any form, whether or not legally enforceable and includes an oral agreement, a decision by an association of enterprises and any concerted practice. A Concerted practice means "a practice involving contacts or communications between competitors falling short of an actual agreement but which nonetheless restricts competition between them."

An agreement is considered collusive under the Competition Act 2007, if it exists between enterprises that supply or acquire goods and services of the same description; prevents, restricts or distorts competition and the object and effect of which is, in any way, to:

- Fix the selling or purchase price of goods and services;
- Share markets or sources of supply of the goods and services;
- Restrict the supply or acquisition of the goods or services

The CCM takes the view that, in most markets, free competition is an effective guarantor of the interests of consumers and is likely best to promote the efficiency, adaptability and competitiveness of the economy of Mauritius. Significant weakening of competition will therefore have adverse effects. Consequently, if the CCM finds evidence of behaviour that is preventing, restricting or distorting competition, on the part of enterprises that have collusive agreements, it will normally expect that such behaviour will have adverse effects on consumers or the economy as a whole.

Following an Investigation, the CCM has the power to force changes in company behaviour and will consider behavioural undertakings offered by the investigated party or parties. It can also impose financial penalties for an intentional or negligent breach of these provisions.

Monopoly abuse:

It is not in itself any breach of the law for an enterprise to be in a monopoly situation. However, as per Section 46(2) of the Competition Act, enterprises which hold monopoly positions may be in breach of the abuse or exploit any market power this position confers upon them. The question for the CCM is whether such enterprises are engaged in conduct which restricts, prevents or distorts competition (such as using their market position to exclude rival enterprises) or otherwise exploiting the monopoly situation.

'Anticompetitive foreclosure' is said to occur when the conduct of a monopoly enterprise restricts or eliminates the effective access of actual or potential competitors to customers or to supplies, to the detriment of consumers or the economy in general. 'Foreclosure' should be read to mean 'exclusion of competitors in a manner that damages consumers or the economy in general', not simply 'exclusion of competitors'.

Anticompetitive foreclosure may arise through exclusive dealing – preventing competitors from selling to customers through the use of exclusive purchasing obligations or rebates. Retrospective rebates, such as a rebate on all wholesale purchases over a year if the sales exceed a target threshold,

may have foreclosure effects because they can result in very powerful incentives for a wholesale buyer just below the threshold to increase sales volumes.

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Following an Investigation, the CCM has the power to force changes in company behaviour and will consider behavioural undertakings offered by the investigated party or parties.

Further information:

For further information see the CCM's website at www.ccm.mu, and the CCM's Procedural Rules and Guidelines: 'CCM 1 - Procedural Rules', 'CCM 3 - Collusive agreements', 'CCM 4 - Monopoly situations and non-collusive agreements' and 'CCM 6 - Remedies and Penalties', all available on the web site.